

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMEL BROWN,	:	
	:	
Petitioner,	:	04 Civ. 5756 (PAC) (MHD)
	:	
- against -	:	<u>MEMORANDUM</u>
	:	<u>OPINION & ORDER</u>
JAMES J. WALSH,	:	
	:	
Respondent.	:	

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HONORABLE PAUL A. CROTTY, United States District Judge:

Petitioner Marcus Brown (“Brown”) seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his August 1999 conviction and sentence, following a jury trial, for Criminal Sale of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Third Degree. Brown asserts two claims for relief from his conviction: (1) that the admission of testimony regarding a prior uncharged crime without a proper limiting instruction violated the Due Process Clause of the Fifth Amendment; and (2) that the sentence imposed is excessive and should be reduced in the interests of justice.

This case was referred to United States Magistrate Judge Michael H. Dolinger, who issued his Report and Recommendation (“R&R”) on July 21, 2006, recommending the denial of Brown’s Petition. The Magistrate Judge provided ten days for written objections, pursuant to Rule 72, Fed.R.Civ.P., and specifically advised that the failure to file objections “may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals.” (R&R, pg. 17.) No objections have been filed.

DISCUSSION

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). As described more completely in the R&R, Brown has not shown that his conviction and sentence were contrary to, or an unreasonable application of, clearly established federal law. See 28 U.S.C. § 2254(d). The Court agrees with Magistrate Judge Dolinger’s determination that neither Brown’s conviction nor his sentence violated the Constitution or laws of the United States, and finds no error in Magistrate Judge Dolinger’s report. Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and denies Brown’s petition for a writ of habeas corpus.

I decline to issue a certificate of appealability. The petitioner has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. Further, Brown did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal. Pursuant to 28 U.S.C. § 1915(a)(3), I also find that any appeal from this order would not be taken in good faith.

The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York
August 31, 2006

SO ORDERED

PAUL A. CROTTY
United States District Judge

DISCUSSION

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). As described more completely in the R&R, Brown has not shown that his conviction and sentence were contrary to, or an unreasonable application of, clearly established federal law. See 28 U.S.C. § 2254(d). The Court agrees with Magistrate Judge Dolinger’s determination that neither Brown’s conviction nor his sentence violated the Constitution or laws of the United States, and finds no error in Magistrate Judge Dolinger’s report. Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and denies Brown’s petition for a writ of habeas corpus.

I decline to issue a certificate of appealability. The petitioner has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. Further, Brown did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal. Pursuant to 28 U.S.C. § 1915(a)(3), I also find that any appeal from this order would not be taken in good faith.

The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York
August 31, 2006

SO ORDERED



PAUL A. CROTTY
United States District Judge

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